

**IN THE MATTER OF THE HUMAN RIGHTS CODE, 1981,
Ch. 53, AS AMENDED**

**AND, IN THE MATTER OF COMPLAINTS MADE BY
MRS. ERICA McMORRIS AND MR. MEL McMORRIS,
DATED JULY 29, 1985 ALLEGING DISCRIMINATION IN
ACCOMMODATION ON THE BASIS OF RACE AND COLOUR
BY NORTHLANDER MOTEL, CONTROLLED BY COULTERS
MOTEL AND MR. SIEGFRIED WURDEMANN**

Board of Inquiry: Dr. D.J. Baum

Appearances:

**Human Rights Commission -
David Lepofsky, Counsel**

**Respondents -
Ronald A. Irwin, Counsel**

Hearings: April 6 and 7, 1988 at Sault Ste. Marie, Ontario.

I The Complaints

The Complainants, a married couple, stated that early in the morning of July 15, 1985, they were refused occupancy at the Northlander Motel in Sault Ste. Marie by the Respondent, Mr. Siegfried Wurdemann, who is the owner and operator of the motel. It is the claim of Mr. and Mrs. McMorris that such occupancy was denied on the basis of race and colour.

In this regard, it should be noted for the purpose of the complaints in terms of the alleged violations of the *Human Rights Code* that Mrs. McMorris is white, and her husband is black. Accordingly, for purposes of the Code, direct discrimination is charged within the meaning of sections 2 and 8, and section 11 as it relates to Mrs. McMorris for discrimination based on association with persons of a different race.

Both complaints, the Commission emphasized, relate to a single set of facts. No allegation is made that the Respondents have a practice of having engaged in a pattern of discrimination.

Discussions in the form of correspondence and conference telephone calls were held incident to these hearings. This was done to expedite the proceedings. No preliminary objections were raised relative to such hearings by the Board of Inquiry.

At the hearing, it was moved by Commission Counsel and agreed by Respondents' Counsel to substitute the name of Coulters Motel Inc. for that of the Northlander Motel. Coulters Motel Inc., in fact, owns the Northlander Motel. The motion was accepted and the Complaints were accordingly amended.

II Findings of Fact

Mr. and Mrs. McMorris are married, and at the time of the complaint-incident, they lived in Windsor, Ontario, with two children, Gene, 13, a child of a previous marriage who was described as dark-skinned, and Timothy, 3, light-skinned and a child of their marriage. Mr. McMorris is a minister and a composer primarily of religious music.

It is agreed that the McMorris family had embarked on a trip by van to

Manitoba from Windsor. Enroute they intended to visit with a friend, Ms. Adele Armstrong of Sault Ste Marie. There is no dispute that this was a planned three-week vacation for which the McMorris family had set aside adequate funds to handle all costs, including any road emergencies.

With Mr. McMorris driving, the family left Windsor at about 6:30 p.m., and they arrived in Sault Ste Marie at about 1 a.m. on July 15th. The entire McMorris family was quite tired. Mr. and Mrs. McMorris decided to find accommodations at the first available motel, and that turned out to be the Northlander Motel.

I pause here to note that the Northlander Motel had a sign which both Mr. and Mrs. McMorris saw advertising a "vacancy, single, \$26" a night. In this regard, it should be noted, for it will have an important bearing on the findings of fact, that Mrs. McMorris had some knowledge of the motel business. About eight years before July 15th, 1985, she had worked at the front desk of a motel in British Columbia where, among other things, she handled registrations, including room rates.

The sign had a very clear meaning to her: There was a vacancy at the motel at the rate of \$26 for one person only. In this regard, that vacancy was for a single bedded room. Finally, it was her understanding, and it was an understanding confirmed by Mr. Wurdemann and Elmer Kars, owner and operator of an adjacent facility called the Catalina Motel, that it would be both a breach of contract with the motel and a violation of law to place more than one person in such a room.

Mr. McMorris drove the van to the parking area directly in front of the motel office. He parked the van facing a large window of that office. The area was brightly lit. The parties are agreed that Mr. McMorris was seated in the driver's seat and clearly visible from the office. The van windows were not tinted. (Indeed, the van was parked no more than six feet from the office itself.) The Commission argued that the children were also visible. Mrs. McMorris said both children could be easily seen from the van. A different view is taken by Mr. Wurdemann: When he finally did look at the van, he saw only Mr. McMorris. In the result, little turns on whether the children were visible.

Mrs. McMorris was to obtain accommodations for the family. She had a better understanding of motel rental procedures than Mr. McMorris. She left the van and rang the office bell, for the door had been locked. Mr.

Wurdemann answered the bell. At that point and for much of the conversation that ensued, Mr. Wurdemann, by his own testimony, did not look at the van. His eyes might have moved around the room, but his attention was centred on Mrs. McMorris.

Mr. Wurdemann was far more than a clerk responding to a potential customer. He was and is the owner, albeit through the corporate Respondent in this matter, of four motels, including the Northlander, located in the vicinity of Sault Ste. Marie. Yet his role as the operator of the motels was rather severely constricted because of a full-time job he held for more than thirty years, that is, from 1955 to March 1988, as a millwright with Algoma Steel Corporation.

Mr. Wurdemann said that he was tired when he answered the ring at the door. Commission Counsel argued that this was a point of inconsistency in Mr. Wurdemann's account of what transpired on the morning of July 15th: Mr. Wurdemann had said nothing about being tired in his earlier statement to the Commission. The omission was not significant. Moreover, the fact is that the hour was late. The office had been locked, and a bell had to be rung to bring Mr. Wurdemann to the door. I believe that he probably was tired when he received Mrs. McMorris.

The office area where Mr. Wurdemann and Mrs. McMorris met is not large. It is a room of about fifteen by eight feet. The desk is vertical to the window where the McMorris van fronted.

Mr. Wurdemann and Mrs. McMorris are agreed that the start of their conversation was polite and business-like. Mrs. McMorris said she wanted accommodations for her family. Mr. Wurdemann responded by asking how many persons that included. Mrs. McMorris answered that there were four persons, two children, including a teenager, and her husband and herself.

Mr. Wurdemann offered a family unit for \$54. Mrs. McMorris then asked whether there was a room with double-beds. Mr. Wurdemann answered that such rooms were available for \$40. Again, the conversation proceeded in a polite and business-like manner.

It was after this point that the discussion took a different turn according to Mrs. McMorris who testified:

I then proceeded to tell him that I would like to have separate

accommodations for our children at which point he turned and looked out the window and looked into the van, and all of a sudden his countenance just changed.

There was a change in his voice. He raised his voice. There was a change in his attitude. He turned toward me and he said, "No." And, I said, "Excuse me, I asked for a single occupancy," and I said the sign out [there] says there is a vacancy and you have a single vacancy. And, he said, *"No, I don't need that kind of business."* [Emphasis added.] And, after that he came towards me. He was very aggressive. I moved aside. He went to the door. He opened the door very briskly and ... he sort of waved his hand and he ushered me out.

... I really never had the opportunity to discuss anything further and he ... never acknowledged whether he had a room. He never stated what the price of it was. I knew he gave me a difficult time. He never even gave me a chance to discuss anything further, he just ushered me out.

Though Mr. Wurdemann is a large man weighing about 300 pounds, and though his voice can be gruff and his demeanor volatile as he demonstrated at the hearing, there is no claim on the part of Mrs. McMorris that Mr. Wurdemann touched her or threatened to touch her. Rather, it is her claim that he looked out the window where he was able to see her husband and his demeanor changed abruptly. He no longer was willing to talk about accommodations for the McMorris family. He was abrupt. His arms were waving. He said, and the point is not disputed, that he "did not need that kind of business," coincident with which he ushered her out of the motel.

Mrs. McMorris spoke about why she queried the single occupancy rate:

Q. Why were you asking about a single room after you passed up the price of a double?

A. Because I was wanting separate units for our children.

Q. How were you thinking of having your children sleep in that event? Who would sleep where?

A. Gene would sleep in the single and our son would sleep with

us in the double room [where there were two beds].

To Mrs. McMorris, her intentions as to why she wanted a single room, namely, for her older son, had to be clear. After all, she fully disclosed to Mr. Wurdemann that she wanted accommodations for her whole family. She testified:

Q. To what extent, if any, did you contemplate having your whole family in a single room?

A. I didn't contemplate that at all. That was totally out of the question as far as I'm concerned.

Q. Why?

A. Number one, I wouldn't think to put my two children in a single room. There would be no place for them. They wouldn't be able to sleep on the floor. There is no way my sons would be in bed with us. To me that's . . . just absurd [four people sleeping in a single-bedded room]. My family and I would have to sleep out in the mini-van. It would be more comfortable, if that was the idea.

Number two, when I entered the motel [office] I told the gentleman [Mr. Wurdemann] it [the accommodations] was for myself, my husband and our two children. And I also requested separate accommodation for the children.

Mrs. McMorris said that once Mr. Wurdemann saw her husband sitting in the van, there was an enormous change in attitude. No longer was there a willingness to discuss rates and accommodations. Rather, abruptly Mr. Wurdemann said to her that he did "not need that kind of business," following which he ushered her from the motel office. Only racial discrimination, according to Mrs. McMorris, would explain the actions of Mr. Wurdemann. Mrs. McMorris testified:

Mrs. McMorris: It was because he said: "I don't need that kind of business."

Mr. Lepofsky: What did that signify to you?

A. It signified to me racial discrimination.

Q. Why is that?

A. Because of the fact before he had looked out the window, he was courteous, polite. After he looked out the window, his countenance, his attitude just changed entirely. His tone of voice, everything about him. He was like a totally different man, and I could draw no other conclusion [than] that he was discriminating against us as a family. He had seen my son out there and my husband.

Q. Did he refer to anybody's colour at any time?

A. No, he did not.

Mrs. McMorris went directly to the van. She was clearly upset, and she related what had transpired to her husband who had seen Mr. Wurdemann speak and then move around the desk and open the door for Mrs. McMorris to leave. Mr. McMorris testified that he, too, became upset; he wanted to talk with Mr. Wurdemann but, at his wife's insistence, he did not. They decided to seek accommodations elsewhere. There was a motel next to the Northlander called the Catalina. Mr. McMorris stated:

A. Yes, next door we parked. Generally, Erica handles anything to do with hotels. . . . When we first arrived I was tired. At this particular time we were next door to the Catalina. She [Mrs. McMorris] had gotten out first, and I decided to go in with her because this was our first time in the Sault, and I figured if this is the kind of thing that's happening in this place, I want to be in there to be with her because we didn't know if all of the hotels were like that . . . us being a mixed marriage. So I went in there with her and the gentleman who approached us was really nice [Mr. Elmer Kars, owner and operator of the Catalina Motel]. And, I was upset and I just explained to him what had happened to us.

Q. What did you explain?

A. I explained to him that we were denied rooms And, I said the man denied us the room I think because he discrim-

inated against us. This is what I shared with the gentleman. He, in turn, . . . was quiet, reluctant to answer, but, then he said maybe it's because he [Mr. Wurdemann] had had problems in the past, and that was the end of the discussion.

For his part, Mr. Kars could best be described as a somewhat reluctant witness. He appeared at the hearing as a result of subpoena. Still, his testimony did not contradict that of Mr. McMorris. Mr. Kars affirmed that Mr. and Mrs. McMorris seemed upset when they presented themselves at the Catalina at about midnight or 1 a.m. on July 15th. He listened to what they had to say, and then proceeded to rent the family a room.

What was done in connection with the rental is important, for it tends to add consistency to the narration of Mrs. McMorris and her husband. First, while Mr. McMorris accompanied his wife to the motel office, Mrs. McMorris made the enquiries concerning accommodations. Second, Mr. Kars made it clear that Mrs. McMorris told him there were four people in their family. Third, Mrs. McMorris took the accommodations that were then available, namely, a room with two double beds, for which she paid not \$26 but \$45. Mr. McMorris testified:

Q. What kind of room did you take at that motel [the Catalina]?

A. We took whatever was available at that particular time, and I believe it was two beds in that room.

. . .

The reason why we took the two beds that night in the same room was, one, because we were tired. The other reason was, Erica we just didn't feel there was no other place. We were so dejected at that time. We were tired; we needed a place to stay. We knew we had to leave early in the morning, and that's the reason.

The next morning the McMorrises telephoned their friend, Ms. Adele Armstrong, whose home they then visited. Ms. Armstrong related what Mrs. McMorris told her and then indicated how Mr. and Mrs. McMorris appeared:

A. . . . [S]he had a very embarrassing experience and she was

humiliated She related that . . . they had gone to a motel the night before, and she had gone in. Her husband and children had stayed in the car. She had gone in to inquire and accommodations, and that at one point the man who she was inquiring from had gone to the door or looked out and seen that her husband was black, and he had been thinking of giving her accommodations, negotiating with her, but after looking outside, he said he didn't want her business, and he ushered her [out], not touching her. But, he made it quite clear that she was excused, and he didn't want to negotiate with her.

Q. And, did you have occasion to observe Mr. or Mrs. McMorris' demeanour or mood as they discussed with you that morning what had happened the night before?

A. She was very upset.

Q. And, how did Mr. McMorris appear?

A. My opinion was that he was . . . concerned for his wife.

I do not take Ms. Armstrong's narration to reflect the truth of what happened in the motel office of the Northlander between Mr. Wurdemann and Mrs. McMorris. I do find, however, that (1) it is further evidence of consistency in the facts as given by Mrs. McMorris; and (2) it is another indication of the perception Mrs. McMorris had of what had occurred, namely, the denial of accommodation on the basis of race.

I come now to Mr. Wurdemann and his account of what transpired on July 15th. In doing so, it is useful to note that Mr. Wurdemann, while he worked full-time as a millwright for more than 30 years, over a considerable period of time developed the four motels that he owned in 1985.

He is a person skilled in the operation of motels. The nature of that business, at least as applied to Sault Ste. Marie and his kind of motels, was one of rigorous competition. Mr. Kars estimated that about 90 percent of all customers are those who arrive without reservations. Indeed, Mr. Kars indicated that the sign often used by motel operators, such as Mr. Wurdemann, of "vacancy \$26, single" is a lure that can be somewhat deceiving. Not infrequently, customers think that more than one person can share a room at that price. I fully accept what Mr. Wurdemann

described as his general approach to the rental of motel rooms, namely, that a "bad deal is better than no deal."

The four motels owned by Mr. Wurdemann, through two corporations which he controls, are essentially a family enterprise in which Mr. Wurdemann's five children are heavily involved. As I noted before, until March 1988, Mr. Wurdemann worked full-time as a millwright for Algoma Steel Corporation, a highly skilled and demanding job.

Mr. Wurdemann is a large person weighing about 300 pounds. His voice can be gruff, and as he demonstrated at the hearing, he can flare both in anger and in perceived hurt. It should be noted, too, that Mr. Wurdemann, in sharp contrast with Mrs. McMorris, is not very articulate. He has difficulty expressing himself. Still, at least as applied to the rental of motel rooms, there can be little question that Mr. Wurdemann has the skill and the capacity to negotiate terms for rental. Whatever may be his general limitations in expression, he is knowledgeable about the operation of the motel business in Sault Ste. Marie.

Evidence was led by Respondents' Counsel to the effect that none of Mr. Wurdemann's four motels has a practice of discrimination on the basis of race. Indeed, over the years, and as currently as the hearings on this matter, persons other than those who are white have been received as guests at the motels. Included among such guests have been those of mixed-race marriage.

Further, Respondent's Counsel presented to the Board of Inquiry the evidence of Mr. Colin Malcolm, owner of the Adams Motel in Sault Ste. Marie, and a member of the executive of the Sault Ste. Marie Motel Association where he has served as president, and treasurer. Respondent's Counsel put a single question to Mr. Malcolm in his capacity as a member of the executive of the motel association:

Q. I only have one question. At any time [have you] been aware of or received any complaints against Mr. Wurdemann with regard to business discrimination [including discrimination on the basis of race]?

A. No.

The cross-examination of Mr. Malcolm by Commission Counsel deserves to be stated somewhat fully:

Q. . . . Is the Northlander currently a member of your association?

A. No.

Q. When was it last a member of your association?

A. Approximately four or five years ago.

Q. Certainly it wasn't [a member] in 1985, I take it?

A. No. . . .

. . .

Q. And does it [the association] advertise and solicit complaints from members of the public regarding its members?

A. No.

Q. Does it advertise and solicit complaints from members of the public regarding any motel in the area that is not a member?

A. No.

Q. Do you have a permanent office?

A. No.

Q. Do you have a temporary office?

A. No.

Q. Staff?

A. No.

Q. Do you have a phone number?

A. No.

Still, the Commission does not dispute the fact that at least three of the motels owned by Mr. Wurdemann there was not practice of racial discrimination. However, the Commission stressed that its complaint involves a single incident relating to Mr. Wurdemann who, as a general matter, did not himself manage the registration of guests at either the Northlander or the other three motels owned by him, for he was fully employed elsewhere as a millwright for more than thirty years.

I agree with what the Commission has said. However, there does remain a point concerning the non-discriminatory practices on the part of the four motels: It may allow for an inference to be drawn, absent other facts, that Mr. Wurdemann, himself, did not engage in racial discrimination as to accommodations at his motels.

The central question before this Board of Inquiry is what happened at about 1 a.m. on July 15, 1985 in the motel office of the Northlander. Why did Mr. Wurdemann refuse to continue his discussion concerning accommodations for the four members of the McMorris family?

Much of what Mr. Wurdemann said comports with the narration as given by Mrs. McMorris. Mr. Wurdemann testified:

A. ... [M]aybe I was asleep I don't even remember that much [A]t nights the door is locked. You got to ring the bell and when you're on nights, it's hard to get business. And, regardless my policy is a bad deal is better than no deal at all [S]o I opened the door and I approached the lady [Mrs. McMorris], and I asked her ... how I can help her.

Well, the first words, and I got them in my mind very clearly. She was very tired, and she would like to have two separate rooms - one for her and her husband, and one for two kids, for her kids since she told me there was a couple, two persons and two rooms, and that's what I remember

At the very start of the discussion between Mrs. McMorris and Mr. Wurdemann, therefore, it is clear that Mrs. McMorris has disclosed that she wanted accommodations for four persons, not one person. Further, she made it clear that the accommodations she wanted were proper beds for each member of the family.

Mr. Wurdemann then testified that he offered Mrs. McMorris a family unit which had two beds in one room and one bed in another room to which there was no connecting door. The price for the family suite was \$54. Next, Mr. Wurdemann discussed a room with two queen-size beds which he offered at \$40.

The conversation up to this point seemed to be proceeding in an expected way. The hour was late, and customers at that time were few. Mr. Wurdemann prides himself in being called the "dollar man," that is, in being able to put together a deal, almost any deal, because in his words, a bad deal is better than no deal. So he was responsive to the needs of Mrs. McMorris, who, in turn, evidenced her knowledge of motel accommodations by asking about alternatives after Mr. Wurdemann offered the first possibility, that of a family suite. Mr. Wurdemann countered by quoting a rate for a room with two queen-size beds.

There was no indication in the testimony up to the point of the offer of a room with two queen-size beds that Mr. Wurdemann and Mrs. McMorris comported themselves in other than a polite way.

Mrs. McMorris then inquired about a single room at the \$26 rate. Again, there is no indication that her inquiry was other than polite. Now, we come to the key element of divergence in the testimony of Mr. Wurdemann from that of Mrs. McMorris, who said that he looked out the window and saw her husband, a black man, for the first time. Immediately thereafter Mr. Wurdemann said to her that he did "not need that kind of business, and without waiting for a reply, or saying anything further about single room availability ushered Mrs. McMorris from the motel office.

Mr. Wurdemann's account is one which reflects exasperation with Mrs. McMorris, and a belief that she wanted a single room with a single bed for all four members of her family. He not only refused to discuss the matter further with her but, he ushered out of his office. In doing so, he further stated that he advised her to try Journey's Inn which was located on the same road as the Northlander. He said that Mrs. McMorris might try lying

to the room clerk by telling that person the single room requested was really only for Mrs. McMorris, and not for anyone else. That is, she should not state that four people were to be squeezed into the single-bedded room. He testified:

A. . . . I said, "Lady, I got enough [of] this. I don't want to argue no more - single, this . . . and that. I can't take it no more. Please leave me alone." I say: "But if you want to, I'll tell you." And, I open the door, and I say: "See that sign. There is Journey's Inn. Go over there and don't tell them . . . I sent you. Take the single room and keep quiet about how many in the party, but leave me alone. Please leave me alone."

It was only as he was escorting Mrs. McMorris to the door, according to Mr. Wurdemann, that he saw Mr. McMorris. Mr. Wurdemann stated: "Well, I have to go by the window because that's the only way I can get to the door . . . I see an automobile [which the parties agreed was the McMorris family van] and I see one person in there and it didn't matter to me what kind person it is. I didn't see no kids whatsoever. I hate to have to say that . . . I see only one person sitting in the front seat. What nationality or what relation to this [person], it didn't matter to me. Maybe it was her uncle. Maybe it was her husband. It didn't matter to me. I did not want four persons for \$26. That was all my money."

It is difficult to accept Mr. Wurdemann's account of what followed from the request for a single room rate by Mrs. McMorris. It does not ring true in terms of a person who sees himself making a bad deal rather than no deal at all. Moreover, Mrs. McMorris only made an inquiry concerning the single room rate. At no point did she say that the room was intended for her entire family. It would have been ludicrous for Mr. Wurdemann to believe that such was the case. After all, Mrs. McMorris had clearly stated that she needed proper accommodations for her family, and especially her children.

Mr. Wurdemann's further account of what followed after he claimed to have taken Mrs. McMorris to the door with the advice that she try to sneak her family into the Journey's Inn motel lends further doubt as to the truthfulness of his testimony. Mr. Wurdemann stated that he stood outside while the McMorris van was driven away. He said that the family apparently followed his advice, for he watched the van turn into the Journey's Inn motel, and then from there go to the Water Tower motel.

Mr. Wurdemann said that some time passed. Only after visiting each motel did the McMorris family drive to the Catalina. And during this entire period, Mr. Wurdemann said he stood outside and watched.

The testimony of Mr. Kars, who as I stated before had to be described as a reluctant witness, was that Mr. and Mrs. McMorris arrived between midnight and 1 a.m., a time frame which certainly would not have allowed for the family to visit two other motels after Mrs. McMorris' discussion with Mr. Wurdemann.

On balance, it must be said that the evidence of Mrs. McMorris is credible while that of Mr. Wurdemann is not. At critical points relative to the context in which he told Mrs. McMorris that he did "not need that kind of business," Mr. Wurdemann's narrative is not to be accepted:

- Mr. Wurdemann knew that Mrs. McMorris was seeking adequate accommodations for all four members of her family. The inquiry by Mrs. McMorris about the single room simply could not be taken by him as a request for a single-bedded room for all members of the McMorris family.
- Until the inquiry concerning the single-bedded room, Mr. Wurdemann responded fully, politely and with civility to Mrs. McMorris. It simply lacks believability that Mr. Wurdemann, who described himself as a person desirous of making a bad deal rather than no deal would abruptly end discussion concerning accommodations on the basis of an inquiry for a single-room rate.
- It was precisely at the point when she made the inquiry concerning the single-room rate that Mrs. McMorris said Mr. Wurdemann looked out the window and saw her husband, a black man.
- It was also at that point in time when Mr. Wurdemann said to Mrs. McMorris that he did "not need that kind of business." Mr. Wurdemann would have this Board of Inquiry believe that the statement was made relative to providing a single-room rate, as applied to a room with a single bed for four people. On the evidence, I must find that Mr. Wurdemann's statement was not made as he indicated. Rather, it was made immediately

after he looked out the window, saw the McMorris family van, and Mr. McMorris.

- The remainder of Mr. Wurdemann's testimony concerning how he accompanied Mrs. McMorris to the motel office door, offered her advice as to how she might sneak her family into the Journey's Inn on a single-room rate, and then stood outside and watched while the McMorris travelled to the Journey's Inn to be followed by the Water Tower motel simply does not square with either the testimony of Mrs. and Mr. McMorris or Mr. Kars of the Catalina motel. The falsity of Mr. Wurdemann's testimony in this regard certainly impugns his credibility in other respects.

- Finally, these conclusions are all the more reinforced by the fact that in the cross-examination of Mrs. McMorris she was never given a fair opportunity to respond to the contrary assertions of Mr. Wurdemann. If such cross-examination had taken place, especially given my findings concerning the credibility of Mrs. McMorris, I believe the inference must be that she would have contradicted them.

III

Conclusions of Law

A. Violation of the Human Rights Code

Racial discrimination as to accommodations is the essence of the violation claimed. It is a serious allegation. I accept what Profesor Adell said in *Nancy Willis and David Anthony Phillips Properties*, unreported, February 18, 1987 (Ontario) at p. 22-23:

Allegations of discrimination in breach of the *Human Rights Code* are serious allegations which should not lightly be upheld. There is a clear obligation on boards of inquiry to scrutinize the evidence brought in support of such allegations with sufficient rigour to discourage the use of the *Code* to harass unpopular or controversial individuals. However, the *Code* is not a criminal statute designed to punish, but a remedial statute designed to prevent unjust discrimination. The civil standard is the appropriate standard of proof under

such a statute

How is that standard to be met in a matter involving racial discrimination where the act questioned may be carried out in a subtle manner? Professor Borins, as he then was, said in *Kennedy and Mahawk College*, 1973 (unreported) at pp. 4-5:

Discrimination on the grounds of race or colour are frequently practised in a very subtle manner. Overt discrimination on these grounds is not present in every discriminatory situation or occurrence. In a case where direct evidence of discrimination is absent, it becomes necessary for the Board to infer discrimination from the conduct of the individual or individuals whose conduct is in issue. This is not always an easy task to carry out. The conduct alleged to be discriminatory must be carefully analysed and scrutinized in the context of the situation in which it arises. *In my view, such conduct to be found discriminatory must be consistent with the allegation of discrimination and inconsistent with any other rational explanation. This, of course, places an onus on the person or persons whose conduct is complained of as discriminatory to explain the nature and purpose of such conduct. It should also be added that the Board must view the conduct complained of in an objective manner and not from the subjective viewpoint of the person alleging discrimination whose interpretation of the impugned conduct may well be distorted because of innate personality characteristics, such as a high degree of sensitivity or defensiveness.*

Viewing the record as a whole, these are the questions I must ask: Does the evidence give rise to a *prima facie* inference of discrimination? Is there a rational explanation which is non-discriminatory that is credible on all the evidence?

For the reasons stated in Part II of this Award, viewing the record as a whole, I find that on a balance of probabilities an inference can be drawn that Mr. Wurdemann denied accommodations to Mr. and Mrs. McMorris on the basis of race in the early morning of July 15, 1985 as manger and operator of the Northlander Motel. The inference derives from the following facts:

1. Mrs. McMorris, a white person, entered the Northlander

Motel and had what appeared to be an entirely normal conversation with Mr. Wurdemann concerning available accommodations for her family consisting of four persons.

2. Mr. Wurdemann looked out the office window and saw Mr. McMorris, a black person. He immediately terminated the conversation concerning rental accommodations. He said to Mrs. McMorris that he didn't "need that kind of business." And, he then ushered her to the door. His manner was abrupt.

On the evidence, I find that Mr. Wurdemann offered no rational explanation which can be accepted as credible that would negate the inference of discrimination. For the reasons stated in Part II of this Award, I simply cannot accept the explanation offered that Mrs. McMorris tried to insinuate her family of four into a single room with a single bed, and that it was in reply to such a request that Mr. Wurdemann said he didn't need that kind of business.

Accordingly, I find on the evidence that the Commission has proved the complaint. There was direct racial discrimination against Mr. McMorris in the refusal to make rental accommodations available within the meaning of sections 2 and 8 of *The Human Rights Code*. And, there was discrimination against Mrs. McMorris within the meaning of section 11 of the *Code* for her association with a person of a different race.

B. Remedy

The Commission has asked for three remedies in relation to the violation:

- ☐ An apology in writing from Mr. Wurdemann
- ☐ Posting in the Northlander Motel of the Human Rights Code
- ☐ General damages to be paid to Mr. and Mrs. McMorris

No request was made by the Commission for special damages. The McMorris family did find acceptable accommodations on July 15, 1985. In that regard, they paid approximately what they would have paid at the Northlander Motel for the same kind of room. Mr. and Mrs. McMorris are in agreement with the Commission position in this regard.

The first two points concerning relief, without question, flow from the complaint and the evidence found in support of that complaint. (a) The *Human Rights Code* shall be posted in a conspicuous place visible to guests on the premises of the Northlander Motel. (b) A written apology shall be tendered by Mr. Wurdemann to Mr. and Mrs. McMorris for the violations found in the complaint. It goes without further statement that the nature of the violation strikes at the very core of the victim.

I now come to the matter of general damages. Section 40(1)(b) of the *Code* allows an award for general damages as to the mental anguish caused the Complainants up to \$10,000. Such general damages include:

- > insult or injury to dignity and self-respect
- > loss of the right to freedom from discrimination
- > pain and suffering
- > emotional upset

An award for general damages can be made where the Respondents have acted either wilfully or recklessly within the meaning of section 40(1)(b) of the Code. Professor Adell said in *Nancy Willis and David Anthony Phillips Properties, supra*, at pp. 29-30:

It is not entirely clear whether, to have acted "wilfully" within the meaning of the latter part of §40(1)(b), a respondent need only have intended to do the act which constituted the infringement, or must also have had the specific intention to cause mental anguish

Reckless conduct, in the context of §40(1)(b), is defined in *Cameron v. Nel-Gor Castle Nursing Home* (1984) 5 Can. H.R.R. D/2170, at ¶ 18546 (Cumming), as being conduct which is "such as to evince disregard of or indifference to consequences, that is, the conduct is done with rashness or heedlessness; it is done wantonly. The state of mind of the contravenor pays no regard to the probable or possibly consequences accompanying her conduct, and the contravenor persists in spite of such knowledge."

See also, *Underwood v. Board of Commissioners of Police for the Town of Smiths Falls* (1986) 7 Can. H.R.R. D/3176, at ¶25462 (Hubbard).

On the evidence, bearing in mind the balance of probabilities, it is clear that Mr. Wurdemann intended the discriminatory act. It is not clear that he intended to cause the mental and emotional anguish that resulted. But, the nature of the act, discrimination on the basis of race, strikes at the very core of the person, of personal self-worth, of personal dignity.

Moreover, Mr. Wurdemann had to see the pain caused Mrs. McMorris; it was patent and it carried over not only to when the McMorris family sought accommodation with Mr. Kars at the Catalina Motel, but the next day when the McMorris family visited their friend, Ms. Armstrong. The emotional hurt to Mr. and Mrs. McMorris was clear from their testimony. Indeed, that hurt continued for the three years that it took to bring this matter to hearing. Further, the pain reached at least one child, Gene, to whom Mr. McMorris had to explain what he referred to as "the facts of life." It is enough to say that such "facts of life" are intended to be ended in terms of the residents of Ontario as to the subjects and actions covered by the *Human Rights Code*.

I have taken into consideration the fact that Mr. Wurdemann was tired when he responded to Mrs. McMorris' enquiries. Still, he should have been aware of the impact of his actions. In what he did, Mr. Wurdemann acted in reckless disregard of the rights of Mr. and Mrs. McMorris within the meaning of section 40(1)(b) of the *Code*.

AWARD

Having found that Mr. Wurdemann and the respondent Coulters Motel, which owns the Northlander Motel, violated sections 2, 8 and 11 of the *Human Rights Code* as set out in the complaints of Mr. and Mrs. McMorris, the following order is entered:

1. A written apology shall be submitted by Mr. Wurdemann to Mr. and Mrs. McMorris concerning the violations of the *Code* set out above. That apology shall be submitted within forty-five calendar days from the issuance of this Award.
2. There shall be posted in the Northlander Motel a copy of the *Human Rights Code*. Such copy shall be in a prominent place visible to guests, and it shall be posted within forty-five days following the issuance of this Award.

3. There shall be paid to Mr. and Mrs. McMorris the sum of \$800.00 each as general damages. Such payments shall be made within forty-five days following the issuance of this Award.

IT IS SO ORDERED.

DATED THIS 29th DAY OF JULY 1988 AT TORONTO, ONTARIO.

A handwritten signature in dark ink, appearing to read 'D.J. Baum', written over a horizontal line.

Dr. D.J. Baum, Board of Inquiry

